IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 251(S/S) 2007

Manoj Kargeti S/o Sri P.B. Kargeti,
Presently posted as Junior Engineer,
Minor Irrigation Department,
New Tehri, Tehri Garhwal. .....Petitioner

Versus

1. State of Uttarakhand through Secretary Irrigation,
   Secretariat, Dehradun,
2. Chief Executive Engineer,
   Minor Irrigation Department, Dehradun. .....Respondents.

Sri B.P. Nautiyal, learned counsel for the petitioner.
Sri N.P. Sah, learned Standing Counsel for the respondents.

Hon'ble M.M. Ghildiyal, J.

Heard Sri B.P. Nautiyal, learned counsel for the petitioner and Sri N.P. Sah, learned Standing Counsel for the State of Uttarakhand/ respondents.

By means of this writ petition, the petitioner has challenged the order dated 25th November 2006 by which the petitioner working as Junior Engineer in Minor Irrigation Department, New Tehri, has been transferred to Ukhimath, district Rudraprayag. The petitioner has assailed the impugned order on various counts.

Firstly, he was transferred from Kotdwar to New Tehri vide order dated 6th August 2005 and he has been there at New Tehri for about 1½ years. Secondly, the petitioner has been transferred in mid session and the transfer order does not speak whether the transfer is being made in public interest or on administrative ground. Thirdly, the petitioner is going to be retired after attaining age of superannuation in the month of

May 2008 and there is a Govt. Order to the effect that the persons who are going to be retired in near future within a span of two years, they should not be transferred as far as possible and if it is necessary, options may be invited from the person effected for three places of their choice on priority basis.

From perusal of the impugned transfer order dated 25th November 2006 it reveals that the same has been passed on the recommendation of Transfer Committee dated 20.11.2006 constituted under Govt. Order dated 29th April 2005. from bear perusal of G.O. dated 29th April 2005, I find that there exists a provision, which directs for constitution of a Transfer Committee in order to make transfers. The relevant Provision is quoted hereunder:-

"(i) कार्मिकों के स्थानांतरण किऐ जाने हेतु शासन स्तर पर, विभागाध्यक्ष, मण्डल एवं जनपद स्तर पर प्रत्येक विभागवार स्थायी स्थानांतरण समितियों का गठन किया जाय, जिसमें विभाग के अधिकारियों के अतिरिक्त एक अधिकारी दूसरे विभाग के भी नामित किए जायें। शासन स्तर पर अवस्थापना विकास आयुक्त शाखा, एफ0आर0डी0सी0 शाखा तथा समाज कल्याण आयुक्त शाखा को छोड़कर अन्य विभागों में स्थानान्तरण समिति में एक अधिकारी कार्मिक विभाग द्वारा नामित किया जायेगा। वार्षिक स्थानान्तरण/ परिवर्तन/ निरस्तीकरण हेतु प्राप्त सभी प्रस्ताव संबंधित विभाग द्वारा इस हेतु गठित समिति के सम्मुख प्रस्तुत किये जायेंगे। समिति इस प्रकार प्राप्त समस्त प्रस्तावों पर विचार करने के पश्चात् स्थानान्तरण नीति के अन्तर्गत संबंधित कार्मिकों के स्थानान्तण करने की संस्तुति करेगी और उस संस्तुति के आधार पर स्थानांन्तरण आदेष संबंधित विभाग/विभागाध्यक्ष, जैसी भी स्थिति हो द्वारा निर्गत किये जायेंगें।''

Thus, it is apparent that the Departments have been directed to constitute a committee for making annual transfers of their employees, who are likely to be transferred in the month of June every year. Para-11 of the aforesaid order specifically states that all the annual transfers shall be made on or before 30th June of the relevant year and after 30th June, if

any transfer is to be made on the recommendation of the Committee; prior approval of the higher authority is required.

From perusal of the impugned order as well as the Govt. Order mentioned above, it does not appear that prior approval of the Higher Authority was obtained in making impugned transfer. Further, the transfer, on the basis of recommendations of Transfer Committee, should have been made upto 30th June, whereas the present transfer order has been passed on 25th November 2006.

The petitioner, during the course of arguments, has stated that he has already moved representation before the appropriate authority for cancellation of impugned transfer order on the aforesaid grounds however, the respondents have not paid any heed towards the representation.

In the circumstances, the petitioner is directed to move fresh representation within 2 weeks from today and the Authority concerned shall take decision on the same within a period of three weeks from the dated of production of a certified copy of this order alongwith the representation.

Till the representation is decided or till 30th April 2007, whichever is earlier, the impugned transfer order dated 25th November 2006 shall be kept in abeyance.

With these directions, the writ petition is finally disposed of. No order as to costs.

(M.M. Ghilidyal, J.)

March 23, 2007:
NCM: